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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14

15 HAKAN YUCESOY, ABDI MAHAMMED,
16 MOKHTAR TALHA, BRIAN MORRIS, and
17 PEDRO SANCHEZ, individually and on behalf
of all others similarly situated,

18 Plaintiffs,

19 v.
20 UBER TECHNOLOGIES, INC.

21 Defendant.

22 Case No. CV 3:15-0262 EMC

23

24 **THIRD AMENDED CLASS ACTION**
COMPLAINT AND JURY DEMAND

25

26 CASE FILED: JUNE 26, 2014

27

28 BEFORE THE HON. EDWARD M. CHEN

1 **I. INTRODUCTION**

- 2 1. This case is brought on behalf of individuals who have worked as Uber drivers in
3 Massachusetts (other than as Uber taxi drivers), including Uber Black Car, UberX, and
4 UberSUV drivers. Uber is a car service that provides customers with drivers who can be
5 hailed and dispatched through a mobile phone application.
- 6 2. Uber has misclassified these drivers as independent contractors, in violation of Mass. Gen.
7 L. c. 149 § 148B. As a result of this misclassification, the drivers have had to bear
8 expenses that should be borne by the employer. For example, the drivers have had to pay
9 expenses to maintain or lease their vehicles, as well as other expenses, such as gas,
10 insurance, and phone data charges.
- 11 3. In addition, Uber has advertised to customers that gratuity is included in the cost of its car
12 service. However, Uber drivers do not receive the total proceeds of any such gratuity.
13 Furthermore, based on Uber's communication to customers that gratuity is included in
14 the price of its service and so they do not need to tip, few if any customers leave tips for
15 the drivers. Uber has also prohibited its drivers from accepting tips. Thus, drivers do not
16 receive the tips that are customary in the car service industry and that they would
17 otherwise receive were it not for Uber's communication to customers that they do not
18 need to tip, and were it not for Uber's prohibition on drivers accepting tips.
- 19 4. Plaintiffs bring this action on their own behalf, and on behalf of all Uber drivers (other
20 than Uber taxi drivers) who have worked in Massachusetts, for violations of the
21 Independent Contractor Law, Mass. Gen. L. c. 149 § 148B, the Tips Law, Mass. Gen. L.
22 c. 149 § 152A, the Massachusetts Minimum Wage Law, Mass. Gen. L. c. 151 § 1, and
23 the Massachusetts Overtime law, Mass. Gen. L. c. 151 § 1A, as well as tortious
24 interference with advantageous relations and breach of contract with customers for which
25 drivers are third party beneficiaries.
- 26

1 **II. PARTIES**

- 2 5. Plaintiff Hakan Yucesoy was an adult resident of Brookline, Massachusetts, and now
3 resides in Turkey. He worked as an Uber Black Car and UberX driver in Massachusetts
4 in 2013 and 2014.
- 5 6. Plaintiff Abdi Mahammed is an adult resident of Cambridge, Massachusetts. He worked
6 as an Uber Black Car driver in Massachusetts from April 2012 until August 2013.
- 7 7. Plaintiff Mokhtar Talha is an adult resident of East Boston, Massachusetts. He worked as
8 an Uber Black Car driver in Massachusetts in 2011 and 2012.
- 9 8. Plaintiff Brian Morris is an adult resident of Melrose, Massachusetts. He has worked as
10 an UberBlack and UberSUV driver in Massachusetts since spring 2012.
- 11 9. Plaintiff Pedro Sanchez is an adult resident of Hyde Park, Massachusetts. He has worked
12 as an UberX driver in Massachusetts since November 2014.
- 13 10. Plaintiffs bring this action on their own behalf and on behalf of all others similarly
14 situated, namely all other individuals who have worked as Uber drivers (other than Uber
15 taxi drivers) in Massachusetts.
- 16 11. Defendant Uber Technologies, Inc. (“Uber”) is an international car service that is
17 headquartered in San Francisco, California.

19 **III. STATEMENT OF FACTS**

- 20 12. Uber provides car service via an on demand dispatch system.
- 21 13. Uber offers customers the ability to hail a car service driver on a mobile phone
22 application.
- 23 14. Uber’s website advertises that “Uber is your on-demand private driver.”
- 24 15. Uber has stated to customers, on its website and in marketing materials, that a gratuity is
25 included in the total cost of the car service and that there is no need to tip the driver.

- 1 16. For example, up until the end of 2012, Uber's website included such statements as
2 "\"There's no need to hand your driver any payment and the tip is included\" and \"Please
3 thank your driver, but tip is already included.\" Beginning in 2013, Uber's website has
4 stated that \"there is no need to tip.\""
5
6 17. Even after the statements were apparently removed from Uber's website at the end of
7 2012 that tips are included in the fare, Uber has nevertheless continued to inform
8 passengers through marketing materials that tips are included in the fare. For example, as
9 recently as at least April 2015, Uber has sent promotional emails to customers, declaring
10 that \"payment is automatically charged to a credit card on file, with tip included.\""
11
12 18. In addition, at various times (and at least through the end of 2012), Uber's contracts with
13 its customers have incorporated by reference the statements and representations made on
14 its website regarding pricing, which includes such statements as the \"tip is included\" in
15 the fare. For example, Uber's contracts with customers (at least through the end of 2012)
16 contained such statements as: \"The Company may change the fees for our Service or
17 Software as we deem necessary for our business. We encourage you to check back at our
18 website periodically if you are interested about how we charge for the Service of [sic]
19 Application.\""
20
21 19. However, despite Uber's representations to customers that the fare includes a gratuity
22 (and despite Uber's contracts with customers that incorporated its pricing information on
23 its website, including the website statements that \"tip is included\"), Uber drivers have not
24 received the total proceeds of this gratuity.
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- 1 20. Instead, Uber has retained a portion of this tip, gratuity, or service charge for itself.¹
2 21. For car service provided by Uber Black Car, UberX, and UberSUV drivers, Uber has
3 generally not specified the amount of the tip, gratuity, or service charge.
4 22. However, it is customary in the car service industry for customers to leave approximately
5 a 20% gratuity for drivers. Thus, where the amount of the gratuity is not specified,
6 reasonable customers would assume that the gratuity is in the range of 20% of the total
7 fare.
8 23. As a result of Uber's conduct and actions in informing customers that gratuity is included
9 in the cost of its service, and that there is no need to tip the drivers, but then not remitting
10 the total proceeds of the gratuity to the drivers, Uber drivers have been deprived of
11 payments to which they are entitled, and which reasonable customers would have
12 expected them to receive.
13 24. Moreover, by informing customers that there is no need to tip the drivers, Uber has
14 further interfered with the advantageous relationship that drivers would otherwise enjoy
15 with customers. Uber has prevented its drivers from receiving tips from customers based
16 upon its deceptive and misleading communications to customers.
17 25. Although classified as independent contractors, Uber drivers are employees under
18 Massachusetts law.
19 26. Uber is in the business of providing car service to customers, and that is the service that
20 Uber drivers provide. The drivers' services are fully integrated into Uber's business, and
21 without the drivers, Uber's business would not exist.

24
25
26 1 Under Massachusetts law, "tips", "gratuities", and "service charges" are generally
27 interchangeable. Thus, Plaintiffs do not, and need not, specify whether the charge is a "tip",
28 "gratuity", or a "service charge".

27. In addition, drivers are required to follow a litany of detailed requirements imposed on them by Uber and they are graded, and are subject to termination, based on their failure to adhere to these requirements (such as rules regarding their conduct with customers, the cleanliness of their vehicles, their timeliness in picking up customers and taking them to their destination, what they are allowed to say to customers, etc.)

28. Drivers are economically dependent on Uber, and when they are transporting Uber customers, they do so on behalf of Uber. In other words, drivers are not wearing their own “hat”, but instead are wearing Uber’s “hat.”

29. Due to their misclassification as independent contractors, Uber drivers have been required to bear many of the expenses of their employment, including expenses for maintaining or leasing their vehicles, insurance, gas, phone data charges, and other expenses. Massachusetts law prohibits employers from requiring employees to pay for their jobs, or to bear expenses that are necessary for the performance of their jobs and which primarily benefit the employer.

30. In addition, Uber does not ensure that drivers receive at least the Massachusetts minimum wage, and drivers often receive less than minimum wage.

31. For example, Plaintiff Morris calculates that, in some weeks, considering the hours he was logged in to the Uber app, and after deducting the cost of his car and gas expenses, the amount he received for his work driving for Uber has come to less than the Massachusetts minimum wage of \$9.00 per hour. For example, during the week of June 16, 2015, Mr. Morris was online with the Uber app for approximately 66 hours. During those hours, he was available for work for Uber, and he was required to accept most ride requests that were sent to him while he was logged in. Thus, during those hours, he was either driving a passenger, driving to pick up a passenger, or waiting to receive a ride request which he would need to accept in order not to risk being deactivated by Uber.

1 Thus, he was working for Uber during those hours. That week, Mr. Morris made
2 approximately \$786 in fares from Uber. After deducting an estimated \$300 for expenses
3 (for a net income of \$486), his hourly rate for that week was approximately \$7.36, which
4 is less than the Massachusetts minimum wage.

5 32. Uber also does not pay time-and-a-half for hours drivers work beyond 40 per week.

6 Drivers often work more than 40 hours per week without receiving this overtime pay.

7 33. For instance, when Plaintiff Yucesoy drove for UberX, he often worked more than 40

8 hours per week. For example, during the week of January 20, 2014, Mr. Yucesoy
9 estimates that he was online with the Uber app for at least 46 hours. That week, he
10 received approximately \$850, which would make his regular rate of pay approximately
11 \$18.48 (or, if expenses were subtracted from his fares, based on an estimated \$300 for
12 expenses, his regular rate of pay would have been \$11.96 for that week). However, Mr.
13 Yucesoy was not paid time-and-a-half his regular rate for the hours he worked beyond
14 forty that week.

15 34. Likewise, Plaintiff Morris has also frequently driven for Uber more than forty hours per

16 week, including, for example, the week of June 16, 2015 when he was online for
17 approximately 66 hours. During that week, he received approximately \$786, meaning
18 that his regular rate of pay was \$11.89 (or \$7.36, as described above, after subtracting an
19 estimated \$300 for expenses). Mr. Morris was not paid time-and-a-half his regular rate of
20 pay for that week for the hours he worked beyond forty.

21 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 35. Pursuant to the state law requirements as set forth in Mass. Gen. L. c. 149 § 150, the above-
23 named plaintiffs filed their statutory claims with the Office of the Attorney General and
24 received a right to sue letter in order to proceed on these claims in court.

COUNT I

Independent Contractor Misclassification

As set forth above, Uber has misclassified its drivers in Massachusetts as independent contractors, in violation of Mass. Gen. L. c. 149 § 148B. As a result of this misclassification, drivers have improperly been required to bear the expenses of their employment (such as expenses for maintaining or leasing their vehicles, insurance, gas, phone data charges, and other expenses), in violation of Mass. Gen. L. c. 149 §§ 148 and 148B. This claim is brought pursuant to M.G.L. c. 149, § 150.

COUNT II

Tips Law Violations

As set forth above, Uber has violated the Massachusetts Tips Law, Mass. Gen. L. c. 149 § 152A, by failing to remit to drivers the total proceeds of gratuities that Uber has informed customers are included in Uber's price for car service. Uber has interfered with drivers' receipt of tips by leading customers to believe that tips are already included in Uber's price for car service.

COUNT III

Tortious Interference with Advantageous Relations

Uber's conduct, as set forth above, in failing to remit the total proceeds of gratuities to the drivers (that customers want to leave for Uber drivers and believe they are leaving for them) constitutes unlawful tortious interference with the advantageous relationship that exists between the drivers and the customers, under state common law. Furthermore, Uber's conduct in informing its customers that there is no need to tip their drivers also constitutes unlawful tortious interference with the advantageous relationship that exists between the drivers and the customers.

under state common law.

COUNT IV

Breach of Contract

Uber's conduct, as set forth above, constitutes breach of contract under state common law. Uber's contracts with its customers have (at least through the end of 2012) incorporated by reference the representations made on its website, which state that a tip is included in drivers' fares. Uber drivers are third-party beneficiaries of the contractual relationship between Uber and its customers, pursuant to which the customers pay what they reasonably believe is gratuity for the benefit of the drivers and intend for the drivers to receive. Uber drivers have been harmed by Uber's breach of this contract with customers.

COUNT V

Violation of Massachusetts Minimum Wage Law

By failing to ensure that Uber drivers receive the full Massachusetts minimum wage for all hours worked, Uber has violated Mass. Gen. L. ch. 151 § 1. This claim is brought pursuant to Mass. Gen. L. c. 151 § 20.

COUNT VI

Violation of Massachusetts Overtime Law

By failing to pay Uber drivers time-and-a-half for all hours worked in excess of forty per week, Uber has violated Mass. Gen. L. ch. 151 § 1A. This claim is brought pursuant to Mass. Gen. L. c. 151 § 1B.

JURY DEMAND

Plaintiffs request a trial by jury on all their claims.

WHEREFORE, Plaintiffs respectfully request this Court to:

- A. Certify this case as a class action pursuant to Mass. Gen. L. c. 149 § 150 and/or Fed. R. Civ. P. 23;
 - B. Issue a declaratory judgment that Plaintiffs are employees, not independent contractors;
 - C. Award damages for all wages or other forms of restitution that are due to Plaintiffs because of their misclassification as independent contractors;
 - D. Award damages that are due to Plaintiffs because of Defendant's violation of Mass. Gen. L. c. 149 § 152A and common law doctrines;
 - E. Award treble damages for all wage law violations;
 - F. Award attorneys' fees and costs; and
 - G. Award any other relief to which the Plaintiffs may be entitled.

Respectfully submitted,

HAKAN YUCESOY, ABDI MAHAMMED,
MOKHTAR TALHA, BRIAN MORRIS, and
PEDRO SANCHEZ, individually and on behalf of
all others similarly situated,

By their attorneys,

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Dated: December 1, 2015

1
2 **CERTIFICATE OF SERVICE**
3

4 I hereby certify that a copy of this Third Amended Complaint was served by electronic
5 filing on December 1, 2015, on all counsel of record.
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11 _____
12 /s/ Shannon Liss-Riordan
13 Shannon Liss-Riordan, Esq.
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